the photographer. But the court does not so deal with the case, and even apart from such a contract the plaintiff should recover. The earlier cases argued that there was a breach of an implied contract and of a fiduciary relation between the photographer and customer. *Pollard* v. *Photographic Co.*, 40 Ch. D. 345; *Moore* v. *Rugg*, 44 Minn. 28, 46 N. W. 141. The relation between a person and his photographer hardly seems of so close and personal a nature as to give rise to fiduciary obligations. In most cases it is reasonable to imply a contract that the photographer shall make no use of the picture. But justice would require a recovery not only where the photograph copyrighted or published is taken by a photographer under agreement but where it is surreptitiously snapped by a stranger. And many courts allow recovery in tort for an interference with the plaintiff's right of privacy. *Pavesich* v. *New England Life Insurance Co.*, 122 Ga. 190, 50 S. E. 68; *Foster-Milburn Co.* v. *Chinn*, 134 Ky. 424, 120 S. W. 364. Wherever this right has been recognized it would seem to cover such a situation as that in the principal case, and allow recovery in tort as well as in contract.

STATUTE OF FRAUDS — SUFFICIENT MEMORANDUM — UNDELIVERED DEED NOT RECITING THE PAROL CONTRACT. — The defendant, in accordance with the terms of a parol contract, prepared and signed a deed conveying certain land to the plaintiff, but retained the deed in his possession. The deed contained no recital of the parol contract. *Held*, that the deed does not constitute a sufficient memorandum to satisfy the Statute of Frauds. *Lowther* v. *Potter*, 197 Fed. 196 (Dist. Ct., E. D. Ky.).

The American cases are almost equally divided as to whether delivery of the written memorandum is necessary to satisfy the Statute of Frauds. *Magee* v. *Blankenship*, 95 N. C. 563; *Johnson* v. *Brook*, 31 Miss. 17. The more recent cases tend toward the view that the requirements of the statute are fulfilled without delivery. *Johnston* v. *Jones*, 85 Ala. 286, 4 So. 748. See *Ames* v. *Ames*, 46 Ind. App. 597, 91 N. E. 509. *Contra*, *Wilson* v. *Winters*, 108 Tenn. 398, 67 S. W. 800. The reasoning is that the real object of the statute is to prevent fraud by the fabrication of oral evidence against the defendant, and that all possibility of such fraud is eliminated when the defendant himself retains possession of the memorandum. *Drury* v. *Young*, 58 Md. 546. This reasoning seems sound. It follows that an undelivered deed, if it can properly be called a memorandum, is sufficient to satisfy the statute. See *Jenkins* v. *Harrison*, 66 Ala. 345, 358, 359. But the statute requires a memorandum of the contract; hence a deed containing no recital of the parol contract does not come within the terms of the statute. *Kopp* v. *Reiter*, 146 Ill. 437, 34 N. E. 942. *Contra*, *Parrill* v. *McKinley*, 9 Gratt. (Va.) 1. It may be argued that it is fair to imply a parol contract from the existence of the deed. But this is not a necessary inference. Nor can an undelivered deed be itself construed as a contract to convey, as might be possible in the case of the delivery of an invalid deed.

TAXATION — PROPERTY SUBJECT TO TAXATION — PROPERTY RECEIVED IN LIEU OF DOWER. — The widow of a testator elected to take real estate devised by will in lieu of dower. Under a statute taxing "All property . . . which shall pass by will or by the intestate laws," she claimed exemption for an amount equal to her dower interest. *Held*, that an amount equal to her dower interest is not subject to the tax. *In re Sanford's Estate*, 137 N. W. 864 (modifying former opinion in same case, 90 Neb. 410, 133 N. W. 870).

It is generally held that dower does not pass by will or the intestate laws and is therefore not subject to an inheritance tax. *In re Weiler's Estate*, 122 N. Y. Supp. 608; *Crenshaw* v. *Moore*, 124 Tenn. 528, 137 S. W. 924. See 25 HARV. L. REV. 181. *Contra*, *Billings* v. *People*, 189 Ill. 472, 59 N. E. 798. The same is true with respect to curtesy. *In re Starbuck's Estate*, 63 N. Y. Misc. 156,

116 N. Y. Supp. 1030, aff'd in 137 N. Y. App. Div. 866, 122 N. Y. Supp. 584; *In re Green's Estate*, 68 N. Y. Misc. 1, 124 N. Y. Supp. 863. But where the property is taken under the will in lieu of dower, it would seem that the title passes by the will and that therefore the transfer is within the taxing statute. *In re Riemann's Estate*, 42 N. Y. Misc. 648, 87 N. Y. Supp. 731. The principal case, as appears from its reference to the case modified by it, apparently holds that the widow's election to take under the will is a sale to her in exchange for her dower rights, and that such a transaction is not within an act taxing "gifts, legacies, and inheritances," quoting the title of the statute. The text of the act proper, however, is similar to most inheritance tax laws and purports to tax "all property . . . which shall pass by will or by the intestate laws." NEB. LAWS, 1901, c. 54, § 1; 2 COBBEY, NEB. ANN. STAT., 1909, § 11,201. It is submitted that even a sale is within this statute if the title to the property sold passes by will. *Cf. In re Gould's Estate*, 156 N. Y. 423, 51 N. E. 287. As the widow chooses to exchange her dower interest for the beneficial devise under the will, it seems just to make her take the incumbrance with the benefit.

TAXATION — PURPOSES FOR WHICH TAXES MAY BE LEVIED — SATISFACTION OF MORAL OBLIGATION. — In 1795 the New York legislature provided for the purchase from the Cayuga Indians of specified lands at 50 cents per acre and their immediate resale at $2 per acre. In 1909 the legislature voted to pay to the Indians the profits on this transaction. *Held*, that this is a proper exercise of the taxing power. *People ex rel. Cayuga Nation of Indians* v. *Commissioners of Land Office*, 137 N. Y. Supp. 393 (Sup. Ct., App. Div.).

A contractor agreed with a city to build a sewer under water at a unit price for materials used. Later, at the contractor's request, the city allowed him to build it dry, which resulted in the use of fewer materials. After the contractor had failed in a suit on the contract the city council voted to pay him what he would have received under the original method. *Held*, that this is an improper exercise of the taxing power. *Longstreth* v. *City of Philadelphia*, 69 Legal Int. 598 (Pa., C. P., Phila. County, Aug. 27, 1912).

It seems well settled that the satisfaction of certain merely moral claims on the public will be a sufficiently public purpose to justify taxation. For instance, a pension for old employees of the state is justifiable. *Trustees of Exempt Firemen's Benevolent Fund* v. *Roome*, 93 N. Y. 313. *Cf. Opinion of the Justices*, 175 Mass. 599, 57 N. E. 675. The waiver of technical defenses is also allowed. *People ex rel. Blanding* v. *Burr*, 13 Cal. 343; *New Orleans* v. *Clark*, 95 U. S. 644. Further, officers may be indemnified for torts incident to their employment. *Messmore* v. *Kracht*, 137 N. W. 549 (Mich.). See 21 HARV. L. REV. 625. Beyond these instances the law is chaotic. The difficulty seems one of ethics rather than law, the determination of what is a moral claim. In determining this question the legislature should have a large discretion. See *Opinion of the Justices*, 175 Mass. 599, 603, 57 N. E. 675, 677; 21 HARV. L. REV. 277. The result in the New York case is obviously just. The Pennsylvania case seems in conflict with a Massachusetts decision. *Friend* v. *Gilbert*, 108 Mass. 408. But the conclusion reached is indisputable. It is difficult to see what moral claim a man can have against a city which merely abides by the terms of a fairly made contract. An opposite course by the city, also, would directly encourage inefficiency. But a different result is reached in the case of a voluntary payment by a city for services received under an illegal contract. *Vare* v. *Walton*, 84 Atl. 962 (Pa.).

TRADE UNIONS — STRIKES — RIGHT TO STRIKE TO COMPEL DISCHARGE OF NON-UNION EMPLOYEE. — Certain members of an incorporated trade union resigned because its funds were expended in support of a political campaign.